BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

Statement.

The only issue to be decided by this Court is whether or not the "Public Vessels Act" of March 3, 1925, United States Code, Title 46, Chapter 22, Sec. 781 et seq., pertinent parts of which are quoted in Petition, pp. 3-4, gives to the proper District Court of the United States, sitting as a Court of Admiralty, jurisdiction over an action brought against the United States to recover for damages caused by a public vessel of the United States even though the damage was to a land structure, such as a bridge.

The Petitioner contends that the language of the Act is clear and all inclusive, and that anyone damaged by a public vessel may, under the terms of this Act, file a libel in admiralty against the United States in the proper United States District Court to recover for such damages.

The Government, on the other hand, contends that the "Public Vessels Act" limits the type of damage for which the Act grants relief to damage of an admiralty nature, such as damage to a ship, and excludes damage to a land structure, such as damage to a bridge.

The District Court, in its opinion, referred to the "Suits in Admiralty Act" of March 9, 1920, United States Code, Title 46, Chapter 20, Sec. 742, the pertinent part of which Act reads as follows:

> "*Section 742. LIBEL IN PERSONAM.* In cases where if *such vessel were privately owned or operated,* or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant

> vessel or is a tugboat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found * * *."

and the District Court said in its opinion (Record, Pp. 6-9) as the *"Suits in Admiralty Act"* did not give jurisdiction to the Admiralty Court of cases involving damage to land structures, it could not have been the intention of Congress, under the *"Public Vessels Act,"* to give any greater rights against the Government in actions for damages caused by publicly owned vessels. It was largely on this premise that the District Court based its decision, sustaining the Government's motion to dismiss the libel.

The reason for limiting relief under the "Suits in Admiralty Act" and making it all inclusive under the "Public Vessels Act" is clear (Infra, pp. 12-14).

The Circuit Court of Appeals, while adopting the decision of the District Court, went further, and, in effect, said that while the language of the "Public Vessels Act" was *abundantly plain,* it was yet ambiguous because the Act did not define the scope of the word "damages." On this point, the Circuit Court of Appeals said (R. P. 16):

> "By its plain words it permits the bringing of a libel in personam in admiralty against the United States for damages caused by a public vessel of the United States. *This is abundantly plain,* but Congress did not see fit to define the scope of the word 'damages' or the scope of the phrase 'in admiralty'." (Italics ours.)

It has been the Petitioner's contention from the beginning that Congress did not intend to confine, restrict, or limit the word "damages," as it intended the Act to include all damages caused by a public vessel.

It is difficult to understand how Congress could have made the language any broader than it did and if it meant to restrict the right to recover to a particular type of damage, it certainly could and would have done so by using a very few restrictive words, but having failed to confine the scope of the word "damages," it will be presumed Congress meant what it said, viz.: that recovery may be had for all types of damages caused by a public vessel.

When Congress passed the "*Public Vessels Act,*" the "*Suits in Admiralty Act*" with its restricting clause had been in existence five years, and Congress would certainly have followed the restrictive clause contained in that earlier Act if it had any intention to restrict the jurisdiction of the Admiralty Court to particular types of damage.

What reason would Congress have to treat different people differently, just because they happened to own different types of property?

Why, if a public vessel struck another vessel that was lying alongside a wharf and glanced off that vessel, and damaged the wharf, would Congress want to give the vessel owner who had been damaged the right to sue in admiralty but compel the wharf owner, who had also been damaged by the same act, to get a Special Congressional Act giving him permission to sue the United States?

In support of its petition, the Petitioner contends:

I. That Congress has the right to determine how the United States may be sued.

II. That when a Congressional Act is clear, the Courts have no right to search for some hidden intention of Congress.

III. That there was reason to give broader rights under the "Public Vessels Act" than were given under the "Suits in Admiralty Act."

IV. That the Senate Report to which the Government referred in the lower court in its argu-

ment and to which it will undoubtedly refer in this Court proves nothing.

I.

Congress Has the Right to Determine How the United States May Be Sued.

Citation of authorities is unnecessary to support this contention. The Government is immune from suit for damages caused by its servants or agents, but such immunity may be waived, and the time, place and type of action that may be brought against it can be fixed by Congress.

II.

When a Congressional Act Is Clear, the Courts Have No Right to Search for Some Hidden Intention of Congress.

In *Caminetti* v. *United States,* 242 U. S. Reports, Page 470, at page 485, Mr. Justice Day said:

> "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms * * *.
>
> "Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion."

At page 490, he further said:

> "* * * If the words are plain, they give meaning to the act, and it is neither the duty nor the privilege of the courts to enter speculative fields in search of a different meaning."
>
> "Reports to Congress accompanying the introduction of proposed laws may aid the courts in reaching

> the true meaning of the legislature in cases of doubtful interpretation, * * *. *But, as we have already said, and it has been so often affirmed as to become a recognized rule, when words are free from doubt they must be taken as the final expression of the legislative intent, and are not to be added to or subtracted from by considerations drawn from titles or designating names or reports accompanying their introduction, or from any extraneous source.* In other words, the language being plain, and not leading to absurd or wholly impractical consequences, *it is the sole evidence of the ultimate legislative intent.* See MacKenzie *v.* Hare, 239 U. S. 299, 308. (Italics ours.)
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> "The fact, if it be so, that the act as it is written opens the door to blackmailing operations upon a large scale, is no reason why the courts should refuse to enforce it according to its terms, if within the constitutional authority of Congress. Such considerations are more appropriately addressed to the legislative branch of the government, which alone had authority to enact and may if it sees fit amend the law."

The Circuit Court of Appeals, referring to the "Public Vessels Act," in this case said (Record, P. 16):

> "By its plain words it permits the bringing of a libel in personam in admiralty against the United States for damages caused by a public vessel of the United States. This is *abundantly plain,* but Congress did not see fit to define the scope of the word 'damages' or the scope of the phrase 'in admiralty'." (Italics ours.)

Why, if the Act is "abundantly plain," did the lower court seek and claim to find a secret intention? The very fact that Congress "did not see fit," as the Circuit Court of Appeals says, to define the scope of the word "damages," shows that it meant to include all types of damage. If Congress had intended to limit or define the scope of the word "damages," then it would have limited the meaning of the word but having failed to do so, it is all inclusive.

We submit that if it had not been for the restrictive clause in the earlier Act ("Suits in Admiralty Act," the lower courts would not have attempted to find restrictions in the present Act and the reasons for the difference in the two Acts is apparent (*Infra*, Pp. 12-14).

III.

There Was Reason to Give Broader Rights under the "Public Vessels Act" Than Were Given under the "Suits in Admiralty Act".

During the last war, the United States Government built a large fleet of merchant vessels, title of which was in the United States Emergency Fleet Corporation, an independent corporation, stock of which was owned by the United States of America. Prior to the passage of the "Suits in Admiralty Act" in 1920, it was a recognized, common, and proper practice for a party injured by a vessel owned or operated by the United States Emergency Fleet Corporation to libel such vessel just as though the vessel had been privately owned, with the result that these ships, which were actually owned by the United States, were being constantly delayed by libels being filed against them and the "Suits in Admiralty Act" was passed to prevent further delays to these vessels.

In *Nahmeh* v. *United States*, 267 U. S. 122, on page 124, the Supreme Court said:

> "The Suits in Admiralty Act was passed to provide a suit in personam in lieu of the previous unlimited right of suitors to libel merchant vessels belonging to the United States Government in rem in ports of the United States and its possessions, a right which had proved objectionable * * *."

As the record title of these ships was in a private corporation, they were not considered public vessels and if one of these vessels caused any damage, that was not of an

admiralty nature, the injured party could and did sue the United States Emergency Fleet Corporation, as the registered owner of the ship in an action at law, just as an injured party would sue the owner of any vessel that did damage to a land structure. It was to *restrict* a right that already existed and not to grant additional rights, that the "Suits in Admiralty Act" was passed.

On the contrary, prior to the passage of the "*Public Vessels Act*", no one ever claimed the right to libel a battleship, a destroyer, or any other publicly owned vessel, and no one ever claimed the right to sue the United States at law for a tort without a special act of Congress permitting the injured party to sue to recover for the damages caused by a public vessel. Prior to the passage of the "Public Vessels Act", it was necessary for a party whose property was injured by a public vessel to get a special act of Congress to permit suit to be brought against the United States. This not only placed an extra and unnecessary burden on the injured party, but it took a tremendous amount of Congress's time to handle such private bills. (Think, with all the additional public vessels that this country now owns, what it is going to mean to Congress if a special act is necessary each time damage is caused by a public vessel.) It was to obviate this unnecessary burden, both to the individual and to Congress, that Congress gave to the public who might be injured by a public vessel a right that had never before existed. The purpose of the Act was just contrary to the purpose of the "Suits in Admiralty Act". One restricted a right that already existed and the other granted new rights that had not before existed.

The Act does not pretend to give the injured party damages; it only gives the injured party a right to litigate his cause of action in an admiralty court of the United States, without the necessity of each time getting a special act of Congress.

What possible reason would Congress have to give any greater or different rights to a class of people who happen to own ships than it did to people who own bridges or docks that might be damaged by a public vessel?

IV.

The Senate Report to Which the Government Referred in the Lower Court in Its Argument and to Which It Will Undoubtedly Refer in This Court Proves Nothing.

In the first place, the Petitioner contends that the Act being clear, the court has no right to seek for any hidden intention that Congress may have had but the Petitioner further contends that there is not a thing to be found in the Senate Report, relating to the passage of the "Public Vessels Act", from which the Government quoted at length in its briefs in the lower courts that indicates that Congress meant to limit the type of damage for which recovery could be had under the Act.

On the other hand, as the Petitioner pointed out in the Court of Appeals, actually a bill for permission to sue in this case was prepared for filing in Congress by a Maine Congressman, but before this bill was filed this congressman was informed by the Chairman of the then Judiciary Committee of the House of Representatives that the State had its remedy under the "Public Vessels Act" and, following this information, the bill was held up and this action started.

Under date of June 20, 1941, the then Acting Secretary of the Treasury of the United States wrote to Honorable Hatton W. Summers, then Chairman of the Committee of Judiciary of the House of Representatives, as follows:

"June 20, 1941.

DEAR MR. CHAIRMAN:

Further reference is made to your letter of May 30, 1941, addressed to the Claims Division, Coast Guard,

Department of the Treasury, inclosing copies of H. R. 1051, 77th Congress, 1st Session, a bill 'For the relief of the State Highway Commission of the State of Maine', and requesting an expression of the views of this Department concerning this proposed legislation.

The purpose of this bill is to authorize and direct payment to the State Highway Commission of the State of Maine of the sum of $6,386.32, as reimbursement for actual expenditures incurred in the repair of the Carlton Bridge, Bath, Maine, damaged on August 17, 1939, when it was struck by the United States Coast Guard tender ILEX.

The claim of the State Highway Commission of the State of Maine in this case appears to be one that is susceptible of adjudication in the courts of the United States under the provisions of the Act of March 3, 1925, 43 Stat., 1112 (U. S. C. title 46, Secs. 781 et seq.). The records of the Coast Guard, which conducted an investigation of the accident in question shortly after its occurrence, disclose grounds for questioning the liability of the United States for the damage to the bridge. It may be pointed out that under the provisions of the Act cited there is a time limit for the bringing of such a suit, namely, two years after the cause of action arose.

Accordingly, this Department is of the opinion that the proper course is for the State Highway Commission of the State of Maine to seek its remedy in the courts as provided by law, and it recommends that the proposed legislation, H. R. 1051, be not enacted.

Very truly yours,

(Signed) HERBERT E. GASTON,
Acting Secretary of the Treasury.

Honorable Hatton W. Summers, Chairman,
Committee on the Judiciary,
House of Representatives.

WPH/fbw.
Typed June 5, 1941."

Under the date of July 24, 1941, Mr. Gaston, in his same capacity, then wrote Honorable Margaret Chase Smith, Con-

gresswoman from Maine, who was to present the bill for permission to sue to recover for the damage in this case, as follows:

"July 24, 1941.

MY DEAR MRS. SMITH:

Further reference is made to your letter of July 1, 1941, concerning H. R. 1051, a bill 'For the relief of the State Highway Commission of the State of Maine,' being for reimbursement on account of damages to the Carleton Bridge resulting from collision of Coast Guard tender ILEX, August 17, 1939.

Careful consideration has been given to the letter of June 28, 1941, from Mr. Wilder, Bridge Engineer of the Highway Commission, and to the report of the preliminary board investigating the damage. The latter had already been considered in the preparation of the Department's report, dated June 20, 1941, to the Chairman, Committee on the Judiciary, but as will be noted, this has reference only to an appraisal of the damage and does not touch the question of liability.

While it is true, as understood by Mr. Wilder, that Congressional action is necessary to secure reimbursement, Congress has provided specific modes of procedure preliminary to its consideration of certain classes of claims, in order that it may have a full ascertainment of facts and a determination thereon by a responsible Government officer or a designated tribunal, as the case may be. *For a claim of the amount of that of the State Highway Commission of the State of Maine in the instant case, $6,386.32, for damages caused by a public vessel of the United States, Congress has made provision in the Act of March 3, 1925 (U. S. C. title 46, secs. 781 et seq.) which gives sole jurisdiction thereof to United States District Courts.* It is this Department's view that it was the intent of Congress in enacting this law that such a claim follow the procedure therein prescribed. The claim, if allowed, thus

comes before Congress for appropriation as the judgment of a court.

In addition to the statutory reasons stated above it appears that the Government may have a good defense, on the ground of negligence of the bridge tender in failing promptly to open the draw of the Carleton Bridge on the occasion in question. To this was added the force of a heavy rain and freshet occurring the night previous, combined with a strong ebb tide, creating conditions which might be held to have rendered the collision unavoidable. In view of these possibilities, the circumstances in their entirety are such as to render determination by a court the logical procedure. If in his judgment such action is warranted, the Attorney General, under the Act cited, is authorized to arbitrate, compromise, or settle the claim, when a libel has actually been filed.

The Department, therefore, feels constrained to adhere to the position stated in its report to the Chairman, Committee on the Judiciary. Attention is again invited to the statutory limitation for bringing suit under the Act of March 3, 1925, namely, two years after the cause of action arose. (Italics ours).

Very truly yours,

(Signed) HERBERT E. GASTON,
Acting Secretary of Treasury.

Honorable Margaret Chase Smith, M. C.,
House of Representatives,
Washington, D. C."

While these letters, like the Senate Report quoted in the briefs of the Government in the lower courts, prove little, they do show that when the actual issue here presented was raised, the then Secretary of the Treasury and the then Chairman of the House Judiciary Committee believed, as the Petitioner does, that the Act was intended to cover and does cover all types of damage caused by public vessels. The Senate Report, referred to in the Government's brief,

is at best negative as no mention of any particular type of damage, for which action may be brought, appears anywhere in the quoted part of the report.

Conclusion.

We, therefore, submit that an order should be issued remanding this cause to the District Court, with directions to take jurisdiction and proceed with the hearing of this cause.

Respectfully submitted,

FRANK I. COWAN,
NATHAN W. THOMPSON,
Proctors for the State of Maine.

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